

REMARKS

The Office Action mailed September 22, 2006 has been received and reviewed. Claims 1, 7-21, and 25-56 are pending, of which claims 21-29 stand withdrawn from consideration. Claims 9, 11-15, 21 and 26-28 have been amended. Claims 22-24 are cancelled herewith. New claims 31-56 have been added. No new matter has been added. All amendments and cancellations are made without prejudice or disclaimer. Reconsideration is respectfully requested.

Election/restrictions

Applicants thank the Examiner for rejoining claims 11-16.

New claims 31-41 have the same wording as claims 10-20, respectively, but depend from claim 9 instead of from claim 1, and are thus directed to the most preferred embodiment of the eukaryotic cell. No new matter is presented herewith and it is respectfully submitted that these claims are allowable for the same reasons as claims 10-20. Consideration is respectfully requested.

Applicants respectfully request to rejoin method claims 21 and 25-29 once the corresponding product claims are allowable, pursuant to M.P.E.P. § 821.04(b). It is submitted that the method claims contain all the elements of the product claims. Method claims 21, 25, 26, 27, 28, 29 correspond to product claims 1, 7, 9, 10, 17 and 20, respectively.

New claims 42-47 are method claims for which rejoinder is respectfully requested for the same reasons as for base claim 21. These claims encompass further embodiments and correspond to product claims 11-16, respectively.

New claims 48-56 are method claims for which rejoinder is respectfully requested for the same reasons as above, and are all directed to the most preferred embodiment of the eukaryotic cell.

IDS

The Examiner is correct that many of the foreign patent documents and non-patent literature of the IDS mailed August 24, 2005 were not submitted in Application No. 09/549,463, the parent of the present application. The documents were submitted in a divisional (Application

No. 10/234,007) of the parent, but not in the parent itself. An IDS including the documents not previously supplied accompanies this amendment. This supplemental IDS is essentially just providing documents previously identified in an IDS, therefore no fee has been included. If the Office determines that a fee is required, please debit TraskBritt Deposit Account No. 20-1469 for the fee.

Claim rejections - 35 U.S.C. § 112

Claim 9 stands rejected under 35 U.S.C. § 112 second paragraph, for containing the trademark PER.C6(TM). Although applicants respectfully disagree with the Examiner on this issue and submit that the claim is clear by explicit reference to the deposited cell strain to define the subject matter, the claim has been amended to expedite prosecution by removal of the trademark name. Reconsideration is respectfully requested.

Claims 11-15 and therefore dependent claim 16 stand rejected under 35 U.S.C. § 112 second paragraph for recitation of the term "proteinaceous molecule." Although applicants respectfully disagree with the Examiner, the term has been amended in these claims into "protein of interest" to bring the terminology in line with the claims from which these claims depend, and for which such amendment was found remedial. Reconsideration is respectfully requested.

Double patenting

Claims 1, 7-9, 17, and 18 stand provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 25 and 30 of copending Application No. 10/499,298. Previously, to expedite prosecution, a terminal disclaimer was filed to overcome the provisional nonstatutory obviousness-type double-patenting rejection over copending application 10/499,298. However, a typographical error was present in the application number recited on the terminal disclaimer. A second terminal disclaimer is enclosed herewith. A fee for this terminal disclaimer has already been paid. Therefore, a second fee has not been enclosed. If the Office determines that a fee is required, please debit TraskBritt Deposit Account No. 20-1469 for the fee.

Additionally, a terminal disclaimer has been filed with regard to copending U.S. Patent 6,855,544. This should not be construed as a belief that the present claims are obvious over the claims of U.S. Patent 6,855,544. Rather, there is a potential that upon the rejoinder of the process claims that an obviousness-type double-patenting rejection would be asserted. In order to prevent delay in the allowance of the present application a terminal disclaimer has been preemptively filed.

Claims 1, 7-10, 17, 18, and 30 stand provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 28, 29, 32-35, and 43 of copending Application No. 11/039,767. The conflicting claims in application No. 11/039,767 have not in fact been patented. Applicants will address these issues in the conflicted applications if required, once the present claims have otherwise been found patentable.

Furthermore, M.P.E.P. § 804 provides:

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Accordingly, in view of the amendments and further arguments provided herewith, if the provisional nonstatutory double patenting rejection is the only remaining rejection in the present application, the rejection should be withdrawn to allow the present application to issue as a patent.

Claim rejections - 35 U.S.C. §§ 102 and 103

Applicants thank the Examiner for withdrawing these rejections. It is believed that this response puts the application in order for allowance, and a Notice of Allowance is respectfully solicited.

Serial No. 10/790,562

If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,



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Enclosures: Information Disclosure Statement
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